

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DIANA Z. ELLIS,

Plaintiff,

v.

DEPARTMENT OF VETERANS'
AFFAIRS,

Defendant.

NO. CV-05-257-RHW

ORDER OF DISMISSAL

Before the Court is Plaintiff's Amended Complaint against Defendant, Department of Veterans' Affairs (Ct. Rec. 19). Plaintiff brings a *pro se* claim against Defendant. By separate Order, the Court granted Plaintiff leave to proceed *in forma pauperis* (Ct. Rec. 6). Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), the Court previously reviewed Plaintiff's Complaint for legal sufficiency, and dismissed it for failing to state a claim on which relief can be granted (Ct. Rec. 15). On October 21, 2005, Plaintiff was directed to file an Amended Complaint. *Id.* Plaintiff's Amended Complaint seeks relief under the Program Fraud Civil Remedies Act of 1986, pursuant 31 U.S.C. §§ 3801-3812.

Plaintiff has also filed a Complaint against this Court for failing to docket her Complaint, issuing an order without the judge's signature, and depriving her of due process (Ct. Rec. 18). Each allegation is meritless, as stated in further detail below.

I. Failing to State a Claim on which Relief May be Granted

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), the Court must dismiss a case

1 if the Court determines the action is “frivolous or malicious, fails to state a claim
2 on which relief may be granted, or seeks monetary relief against a defendant who is
3 immune from such relief.” *See Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir.
4 2000) (“section 1915(e) applies to all *in forma pauperis* complaints”).

5 Plaintiff’s complaint does not meet the requirements of 28 U.S.C.
6 § 1915(e)(2). Specifically, Plaintiff’s Amended Complaint again “fails to state a
7 claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). In the
8 Amended Complaint, Plaintiff asserts a personal injury in violation of the Program
9 Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812. The Program Fraud
10 Civil Remedies Act was enacted to allow federal departments and agencies to
11 pursue administrative actions against individuals for false, fictitious, or fraudulent
12 claims for benefits or payments under a federal agency program. 31 U.S.C. §
13 3102; *see also Orfanos v. Dep’t of Health & Human Servs.*, 896 F. Supp. 23, 24-25
14 (D.D.C. 1995) (though not controlling in this jurisdiction, this case stated that the
15 Program Fraud Civil Remedies Act of 1986 is only available to remedy frauds
16 against federal departments and agencies). The Program Fraud Civil Remedies Act
17 was not enacted for citizens to utilize as a cause of action against an administrative
18 agency, and Plaintiff has failed to present any authority indicating otherwise. *See*
19 31 U.S.C. § 3102. Thus, Plaintiff cannot be granted relief under this cause of
20 action, and accordingly her Amended Complaint must be dismissed. *See Lopez*,
21 203 F.3d at 1126 n.7; *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)
22 (noting 28 U.S.C. § 1915(e) requires a district court to dismiss an *in forma*
23 *pauperis* complaint that fails to state a claim).

24 Plaintiff was previously directed by the Court to submit an Amended
25 Complaint stating: 1) the names of the persons who caused or personally
26 participated in causing the alleged deprivation of her constitutional rights; 2) the
27 dates on which the conduct of each defendant allegedly took place; and 3) the
28 specific conduct or action Plaintiff alleges is unconstitutional. In the Amended

1 Complaint, Plaintiff failed to name the persons who caused her alleged deprivation
2 of constitutional rights, the date the violation occurred, and the specific
3 unconstitutional conduct. Plaintiff has already been afforded one opportunity to
4 amend her complaint and it is apparent that allowing another opportunity to amend
5 would be futile. Plaintiff seeks to appeal a decision of the Department of Veterans'
6 Affairs concerning her veterans' benefits, and this Court lacks jurisdiction to
7 review decisions of the Department of Veterans' Affairs concerning veterans'
8 benefits. 38 U.S.C. § 511(a) (previously 38 U.S.C. § 211); *Johnson v. Robison*,
9 415 U.S. 361, 370 (1974) (identifying two primary purposes behind the no-review
10 clause: "(1) to insure that veterans' benefits claims will not burden the courts and
11 the Veterans' Administration with expensive and time-consuming litigation, and
12 (2) to insure that the technical and complex determinations and applications of
13 Veterans' Administration policy connected with veterans' benefits decisions will
14 be adequately and uniformly made"); see *Demarest v. United States*, 718 F.2d 964,
15 966 (9th Cir. 1983) (interpreting 38 U.S.C. § 511(a) as providing finality to "all
16 decisions of the Department of Veterans' Affairs concerning veterans' benefits.").

17 **II. Complaint Against the Court**

18 Plaintiff's Complaint against this Court alleges a violation of her rights
19 based on this Court's failure to docket her complaint, issuing an order without the
20 judge's signature, and depriving her of due process. Pursuant to 28 U.S.C. §
21 1915(e)(2)(B)(i), the Court shall dismiss a case if the Court determines the action is
22 frivolous. Each of Plaintiff's claims against this Court are frivolous.

23 A claim is legally frivolous when it lacks an arguable basis in either law or
24 in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745
25 F.2d 1221, 1227-28 (9th Cir. 1984). The Court may dismiss a claim as frivolous
26 where it is based on an indisputably meritless legal theory or where the factual
27 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The critical question is
28 whether a claim, however inartfully pleaded, has an arguable legal and factual

1 basis. *Franklin*, 745 F.2d at 1227.

2 Each of Plaintiff's claims against the Court are frivolous because they are
3 based on unfounded factual allegations. Plaintiff's Complaint was docketed and
4 assigned docket number CV-05-00257-RHW. Additionally, the previously issued
5 order was electronically signed by Chief United States District Judge Robert H.
6 Whaley. Plaintiff's final allegation of deprivation of due process is meritless
7 because this Court lacks the jurisdiction to review a decision of the Department of
8 Veterans' Affairs regarding veterans' benefits, as previously discussed. Therefore,
9 Plaintiff's Complaint against this Court must be dismissed as frivolous because the
10 factual contentions are baseless. 28 U.S.C. § 1915(e)(2)(B)(i); *Neitzke*, 490 U.S. at
11 327.

12 Accordingly, Plaintiff's Amended Complaints (Ct. Rec. 18 & 19) are
13 **DISMISSED with prejudice.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and forward copies to Plaintiff and **close the file.**

16 **DATED** this 27th day of January, 2006.

17
18 s/Robert H. Whaley

19 ROBERT H. WHALEY
20 Chief United States District Judge
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